

**State of New Hampshire
Board of Medicine
Concord, New Hampshire 03301**

In the Matter of:
Michael W. Yushak, M.D.
No.: 6368
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine (“Board”) and Michael W. Yushak, M.D. (“Dr. Yushak” or “Respondent”), a physician licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 329:17, I, 329:18, and 329:18-a, and Medical Administrative Rule (“Med”) 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on April 2, 1981. Respondent holds license number 6368. Until March 8, 2004, Respondent practiced gynecology and obstetric medicine in the Claremont, New Hampshire area.

3. On or about March 21, 2003, the Board received notification that Valley Regional Hospital in Claremont, New Hampshire issued an Emergency Suspension of Respondent's clinical privileges because of Respondent's lack of clinical competence up to the applicable standard of care and serious health problems impairing Respondent's ability to safely exercise his clinical privileges.
4. In response to this, the Medical Review Subcommittee of the Board conducted an investigation and obtained information from various sources pertaining to Respondent's treatment of Patient A.
5. The Board's investigation revealed the following facts:
 - A. On or about December 6, 2003, Patient A was admitted to the Valley Regional Hospital, Claremont, New Hampshire for a total abdominal hysterectomy and a bilateral salping oophorectomy.
 - B. At some time prior to admission for surgery, an ultrasound of Patient A's pelvic area was performed. The ultrasound revealed the presence of a thirteen (13) centimeter mass which the radiology report indicated was suspected to be adenocarcinoma of the ovary.
 - C. Upon admission, Patient A's consent form and Respondent's surgical procedure plan for Patient A indicated that Patient A was to undergo a total hysterectomy. Patient A did not receive the care to which she consented or which preoperatively was indicated as being necessary.

D. Respondent engaged in repeated acts of negligence in his management of the care and treatment of Patient A in that Respondent:

1. failed to adhere to the planned surgical procedure which Patient A consented to undergo and Respondent failed to document the rationale for diverging from that plan in the operative notes;
2. failed to follow the required standard of care in that despite the ultrasound and radiology reports indicating the presence of a 13 centimeter mass in Patient A's pelvic area, Respondent employed a pfannestiel or transverse incision during the surgical procedure which was inappropriate given the preoperative surgical plan and the findings of the ultrasound; and
3. failed to prepare the appropriate staging necessary for a total abdominal hysterectomy and bilateral salping oophorectomy and removal of an ovarian carcinoma.

E. As a result of Respondent's acts, Patient A was required to be transferred to the another hospital for treatment and she was diagnosed with moderately differentiated adenocarcinoma of the ovary and potentially subjected to additional surgery.

6. The Board finds that Respondent committed the acts as described in paragraph 5 above and concludes that, by engaging in such conduct, Respondent violated RSA 329:17, VI (b), (c) and (d).

7. Respondent denies certain of the allegations set forth in paragraph 5 above but acknowledges that, if proven at a hearing, that the conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a physician in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
 - A. Respondent is REPRIMANDED.
 - B. Respondent's license to practice in the area of gynecology and obstetric medicine is RESTRICTED to those gynecological and obstetric patients requiring no surgery or only minor gynecological surgery, similar to the obstetric and gynecological medicine practiced by a practitioner of family medicine.
 - C. Nothing in this *Settlement Agreement* shall prevent Respondent from applying to the Board to have the restriction on his license lifted.
 - D. Respondent's current license expires in June of 2004. Respondent may apply to renew his license in the ordinary course subject to the restrictions and conditions set forth in this *Settlement Agreement*, and the Board may process Respondent's application when received in the ordinary course, subject to the restrictions and conditions set forth in this *Settlement Agreement*.
 - E. Respondent avers that he has performed no surgery requiring patient hospitalization or delivered any babies since his suspension of privileges by

Valley Regional Hospital and that on February 8, 2004 he notified all patients in writing of his retirement. As of March 8, 2004, Respondent is retired from the practice of medicine.

F. Dr. Yushak agrees that, no earlier than 90 days before reapplying for a license with the Board, he shall undergo a global assessment, at his own expense. Respondent shall follow all recommendations made during the global assessment.

1. The global assessment shall take place at the Center for Personalized Education for Physicians in Aurora, Colorado or at a facility for which the Board gives its approval.
2. Respondent shall make all arrangements and sign all necessary releases to provide the Board with a copy of the results of the global assessment within ten (10) days of the completion of the assessment, provided, however that any such global assessment report or records shall be sealed by the Board, remain confidential and not be subject to public disclosure.

G. Prior to applying to the Board to have the restriction on his license lifted, Respondent shall present evidence to the Board of alcohol abuse treatment by the New Hampshire Medical Society's New Hampshire Physician Health Program ("NHPHP") or other alcohol abuse treatment provider and shall make all arrangements and sign all necessary releases for the Board to receive a

copy of any recommendations made by any alcohol abuse treatment facility or any recommendations made by the NHPHP, provided, however, that all such recommendations made to the Board in the context of this *Settlement Agreement* shall be sealed by the Board, remain confidential and shall not be generally subject to public disclosure.

1. Respondent agrees to follow any recommendations made by the NHPHP or other alcohol abuse treatment provider; and
 2. Respondent agrees to provide the Board with documentation of his compliance with any recommendations made to him.
- H. For a continuing period of one (1) year from the date that Respondent returns to the practice of medicine, Respondent agrees to submit to random alcohol screening in his work setting. This shall be conducted no fewer than twice monthly and shall be at Respondent's expense. Respondent shall make all arrangements and sign any releases necessary to provide the Board with monthly accounts of these screenings.
- I. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any agency or authority which licenses, certifies or credentials physicians, with which Respondent is presently affiliated.
- J. For a continuing period of one (1) year from the date that Respondent returns to the practice of medicine, Respondent shall furnish a copy of this *Settlement*

Agreement to any employer to which Respondent may apply for work as a physician or for work in any capacity which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physicians, to which Respondent may apply for any such professional privileges or recognition.

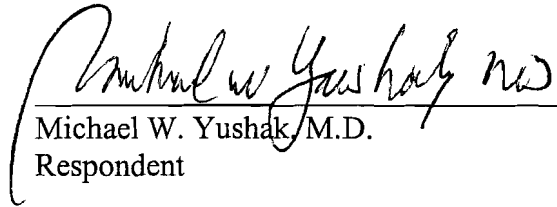
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.

13. The Board agrees that in return for Respondent executing this agreement, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
16. Respondent understands that the Board must review and accept the terms of this agreement. If the Board rejects any portion, the entire agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this agreement have prejudiced his right to a fair and impartial hearing in the future if this agreement is not accepted by the Board.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this agreement.
18. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of

these rights. Respondent understands that by signing this agreement, he waives these rights as they pertain to the misconduct described herein.

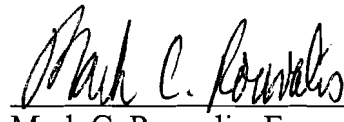
19. This agreement shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

Date: 12/29/05



Michael W. Yushak, M.D.
Respondent

Date: 2/08/06

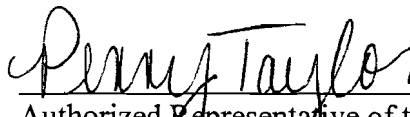


Mark C. Rouvalis, Esq.
Counsel for Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: March 7, 2006



Authorized Representative of the
New Hampshire Board of Medicine

/* Board members, recused:

Cynthia S. Cooper, MD
Kevin Costin, P.A.